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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,716

12/22/2006

Arthur Bunn

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5188

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EXAMINER

ALEXANDER, REGINALD

ART UNIT

PAPER NUMBER

3742

NOTIFICATION DATE

DELIVERY MODE

01/07/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patent-ch@btlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,716	<b>Applicant(s)</b> BUNN, ARTHUR	
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 13-17, 19-24 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 13-17 is/are allowed.
- 6) ☒ Claim(s) 19-21, 23, 24, 26-29 and 31 is/are rejected.
- 7) ☒ Claim(s) 22 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/16/10</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-21, 23, 24, 26-29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winstanley et al. in view of Rhoten.

There is disclosed in Winstanley a beverage making apparatus for controllably producing a beverage from a beverage making substance by combining heated water with a beverage substance, the apparatus comprising: a controller (para. 0027); a controllable water source 102; a water dispensing line communicating with the water source; a flow meter 200 communicating with the water dispensing line and coupled to the controller for monitoring the volume of water flowing through the water dispensing line; a controllable heated water reservoir 204 communicating with the water dispensing line and coupled to the controller for controllably heating water for use in making beverages; a spray head 300 communicating with the heated water reservoir; and a pump 202 communicating with the water dispensing line and coupled to the controller for pumping water to the spray head.

Rhoten discloses for use in a beverage making apparatus, a user operable adjustment control assembly 27, 28, 65, 67 coupled to a controller 29 for allowing a user to selectively adjust a characteristic of a beverage produced by the apparatus, the

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adjustment control assembly being coupled to a potentiometer 65, 67 communicating with the controller, the characteristic being coffee volume (col. 8, lines 11-13), strength and color.

It would have been obvious to one skilled in the art to provide the apparatus of Winstanley with the adjustment control assembly taught in Rhoten, in order to allow user selection of a beverage strength and color.

It should be noted that the knobs 27, 28 of Rhoten, while being rotatable, translate to a sliding movement.

In regards to claim 27, the horizontal movement of the control assembly is an obvious matter of design choice. Such movement provides no functional difference to the operation of the control assembly.

#### ***Allowable Subject Matter***

Claims 22 and 30 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-5 and 13-17 are allowed.

#### ***Response to Arguments***

Applicant's arguments filed 03 December 2010 have been fully considered but they are not persuasive. Applicant argues that there is no reasonable suggestion or motivation in the prior art to modify the references.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and

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that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In this case, the use of a user operable variable adjustment control assembly in connection with a controller, to provide a variable range of settings, including volume of water, in a beverage making apparatus has been taught by Rhoten. Such a control assembly would allow a user of the beverage making apparatus to customize their beverage and make for a better drinking experience.

Applicant argues that the time dispensed system of Rhoten is taught away from in Winstanley.

Applicant acknowledges that Winstanley is directed to the production of discrete volumes and not variable volumes or other drink features. Thus, it is the teachings in Rhoten which make for a modification of the Winstanley device so as to allow for variable volumes and other features of a user beverage. This modification making for the improved drinking experience by a user as mentioned above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
Art Unit 3742